

Introduced by Senator MargettFebruary 21, 2002

An act to amend Sections 667.1, 667.5, 1170.125, 1192.7, 12022, 12022.5, 12022.53, 12022.7, and 12025 of, and to add Chapter 12 (commencing with Section 186.40) to Title 7 of Part 1 of, the Penal Code, relating to terrorism, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1686, as introduced, Margett. Terrorism.

Under existing law, terrorist activity is punishable under laws proscribing criminal conduct, including laws proscribing train wrecking, false reporting of bombs, improper possession or transport of explosives and hazardous materials, assault, and others.

This bill would make findings and declarations regarding terrorists, and would make it a crime for an active participant in a criminal terrorist organization to willfully promote, further, or assist in felony conduct by a member of a criminal terrorist organization, as specified, punishable by 5, 10, or 15 years in the state prison. This bill would also enhance the penalties for felonies committed with the intent to commit or aid in committing criminal terrorism, by terms that vary depending on the underlying felony.

By creating new crimes and enhancements, requiring additional filing and evidentiary showings by local prosecutors, this bill would impose a state-mandated local program.

Under existing law, certain listed crimes, known as “serious” and “violent” felonies, may be filed to enhance the punishment for felonies under the “Three Strikes” law. Existing law, as amended by initiative Proposition 21, which allows the Legislature to directly amend its



provisions by $\frac{2}{3}$ vote, fixed the lists of serious and violent felonies for purposes of the “three strikes” law, on the date of the initiative, March 7, 2000.

This bill would add the new enhancements for participation in a criminal terrorist organization to both the serious and violent felony lists, and would add certain provisions relating to weapons of mass destruction to the serious felony list. It would also amend the provision fixing the date of the lists for purposes of the “Three Strikes” law by providing that the references to the lists are as they existed on the effective date of this bill.

Under existing law, personal use of a dangerous or deadly weapon in the commission of a felony, if proved, enhances the penalty.

This bill would make that enhancement applicable to a principal convicted of an offense to which a criminal terrorist enhancement was applied, if any other principal was armed in the commission of the offense. The weapons enhancement would apply equally to a principle who did not personally use or know of the weapon.

By expanding the application of a sentence enhancement, this bill would impose a state-mandated local program.

Existing law provides for sentence enhancements for personal use of a firearm, personal use of a firearm during the commission of a specified felony, and personal infliction of great bodily injury in the commission of a felony. Existing law makes a person convicted of felony, in which any principal’s sentence is enhanced because the felony is in support of a criminal street gang, vicariously liable for the use of a firearm by another principal in a certain specified felony offenses.

This bill would apply all of these enhancements to a principle convicted of an offense to which a criminal terrorist enhancement was already applied, without a showing of personal use of knowledge of the firearm.

Under existing law, it is unlawful to carry a concealed firearm, as specified. Under existing law, this charge is a misdemeanor, although under specified circumstances it can be charged as a felony, carrying up to 3 years in state prison.

This bill would permit a person to be imprisoned for 5, 10, or 15 years for carrying a concealed firearm, if the person is an active participant in criminal terrorism or in a terrorist organization, as specified.

By adding an element requiring new pleading and proof requirements, this bill would impose a state-mandated local program.



The bill would declare that it is to take effect immediately as an urgency statute.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 12 (commencing with Section 186.40) is added to Title 7 of Part 1 of the Penal Code, to read:

CHAPTER 12. CRIMINAL TERRORISM ENFORCEMENT AND
PREVENTION ACT

186.40. This chapter shall be known and may be cited as the “California Criminal Terrorism Enforcement and Prevention Act.”

186.41. (a) The Legislature hereby finds and declares that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution of the United States with a motive to intimidate or threaten to intimidate a civilian population; to influence public policy through threats, intimidation, or coercion; or to affect the conduct of government by mass destruction, assassination, kidnapping, and other violent and serious felony offenses.

(b) The Legislature further finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of terrorist groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression, freedom of association, and freedom of religion. The Legislature hereby recognizes the constitutional right of every

1 citizen to harbor and express beliefs on any lawful subject, to
2 lawfully associate with others who share similar beliefs, to petition
3 lawfully constituted authority for a redress of perceived
4 grievances, to participate in the electoral process, and to engage in
5 the free expression of religion.

6 (c) The Legislature, however, further finds that the State of
7 California, along with its sister states, is in a state of crisis which
8 has been caused by terrorists who have threatened, have terrorized,
9 and have committed a multitude of crimes against the peaceful
10 citizens of the United States, and that these actions by terrorists
11 threaten the peace and safety of the citizens of the State of
12 California. The activities of these terrorists and their associates
13 present a clear and present danger to public order and safety and
14 are not constitutionally protected. It is the intent of the Legislature
15 in enacting this chapter to seek the eradication of criminal activity
16 by terrorists by focusing upon terrorist activities.

17 (d) The Legislature further finds that an effective means of
18 punishing and deterring the criminal activity of criminal terrorists
19 is by the enactment of statutes that provide swift, certain and
20 substantial punishment for criminal activities committed by
21 persons whose intent is to promote, to further and to assist criminal
22 terrorism.

23 186.42. (a) Any person who actively participates in any
24 criminal terrorist organization, as defined in subdivision (d), with
25 knowledge that its members conspire or have conspired to engage
26 in, do engage in, or have engaged in criminal terrorism, as defined
27 in subdivision (c), and who willfully promotes, furthers, or assists
28 in any felonious criminal conduct by any member of that criminal
29 terrorist organization, shall be punished by imprisonment in the
30 state prison for 5, 10, or 15 years.

31 (b) Any person who is convicted of a felony committed with the
32 specific intent to commit or to aid in committing criminal
33 terrorism, as defined in subdivision (c), or to promote, further, or
34 assist in any criminal conduct by any member of a criminal
35 terrorist organization, as defined in subdivision (d), shall, in
36 addition and consecutive to the punishment prescribed for that
37 offense, be punished as follows:

38 (1) Except as provided in paragraphs (2) and (3), the person
39 shall be punished by an additional term of 3, 5, or 10 years in the
40 state prison.

(2) If the underlying felony is itself a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of 15 years in the state prison, unless it is also a violent felony, as defined in subdivision (c) of Section 667.5, in which case paragraph (3) shall apply.

(3) If the underlying felony is itself a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 25 years in the state prison.

(c) As used in this chapter, “criminal terrorism” means any conduct or action which has as a primary motive or purpose the intimidation of the civilian population, the influencing of public policy, or the impacting of governmental conduct by any of the following:

(1) Threats, intimidation, or coercion.

(2) Mass destruction.

(3) Assassination or kidnapping.

(4) Any violent felony as defined in subdivision (c) of Section 667.5.

(5) Any serious felony as defined in subdivision (c) of Section 1192.7.

(d) As used in this chapter, “criminal terrorist organization” means any formal or informal organization, association, or group consisting of three or more persons, which has as a primary motive or purpose the commission of criminal terrorism as defined in subdivision (c), and whose members conspire or have conspired to engage in, do engage in, or have engaged in criminal terrorism, as defined in subdivision (c).

(e) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(f) In order to secure a conviction or a true finding pursuant to this section, it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to a criminal terrorist organization, nor is it necessary to prove that the person is a member of a criminal terrorist organization. Active participation in the criminal terrorist organization is all that is required for a conviction pursuant to subdivision (a).

(g) In order to secure a conviction or a true finding pursuant to this section, it is not necessary for the prosecution to prove that the

1 terrorism motive or purpose was the only motive or purpose for the
2 offense. When multiple motives or purposes have contributed to
3 the commission of the offense, it is necessary to secure a
4 conviction or true finding pursuant to this section that the terrorism
5 motive or purpose was a substantial factor causing the offense to
6 be committed.

7 (h) In order for a punishment specified in subdivision (b) to be
8 imposed, the existence of any fact required for imposition of an
9 enhancement pursuant to that subdivision shall be alleged in the
10 accusatory pleading and either admitted by the defendant in open
11 court or found to be true by the trier of fact. When an enhancement
12 specified in subdivision (b) has been admitted or found to be true,
13 the court shall, subject to Section 654, impose punishment for the
14 enhancement pursuant to subdivision (b) in addition to
15 punishment authorized under any other provision of law.

16 (i) Nothing in this section shall be construed to preclude
17 prosecution under both this section and any other provision of law
18 for criminal acts that violate this section and other penal statutes
19 of the State of California.

20 (j) It is the intent of the Legislature that if any provision in this
21 act conflicts with another provision of law which provides for a
22 greater penalty or a longer period of imprisonment, the latter
23 provision shall apply.

24 SEC. 2. Section 667.1 of the Penal Code is amended to read:

25 667.1. (a) Notwithstanding subdivision (h) of Section 667,
26 for all offenses committed on or after the effective date of this act,
27 all references to existing statutes in subdivisions (c) to (g),
28 inclusive, of Section 667, are to those statutes as they existed on
29 the effective date of this act, including amendments made to those
30 statutes by this act.

31 (b) *For purposes of this section, “this act” refers to the act that*
32 *created the California Criminal Terrorism Enforcement Act.*

33 SEC. 3. Section 667.5 of the Penal Code is amended to read:

34 667.5. Enhancement of prison terms for new offenses because
35 of prior prison terms shall be imposed as follows:

36 (a) Where one of the new offenses is one of the violent felonies
37 specified in subdivision (c), in addition to and consecutive to any
38 other prison terms therefor, the court shall impose a three-year
39 term for each prior separate prison term served by the defendant
40 where the prior offense was one of the violent felonies specified

1 in subdivision (c). However, no additional term shall be imposed
2 under this subdivision for any prison term served prior to a period
3 of 10 years in which the defendant remained free of both prison
4 custody and the commission of an offense which results in a felony
5 conviction.

6 (b) Except where subdivision (a) applies, where the new
7 offense is any felony for which a prison sentence is imposed, in
8 addition and consecutive to any other prison terms therefor, the
9 court shall impose a one-year term for each prior separate prison
10 term served for any felony; provided that no additional term shall
11 be imposed under this subdivision for any prison term served prior
12 to a period of five years in which the defendant remained free of
13 both prison custody and the commission of an offense which
14 results in a felony conviction.

15 (c) For the purpose of this section, “violent felony” shall mean
16 any of the following:

17 (1) Murder or voluntary manslaughter.

18 (2) Mayhem.

19 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
20 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
21 262.

22 (4) Sodomy by force, violence, duress, menace, or fear of
23 immediate and unlawful bodily injury on the victim or another
24 person.

25 (5) Oral copulation by force, violence, duress, menace, or fear
26 of immediate and unlawful bodily injury on the victim or another
27 person.

28 (6) Lewd acts on a child under the age of 14 years as defined
29 in Section 288.

30 (7) Any felony punishable by death or imprisonment in the
31 state prison for life.

32 (8) Any felony in which the defendant inflicts great bodily
33 injury on any person other than an accomplice which has been
34 charged and proved as provided for in Section 12022.7 or 12022.9
35 on or after July 1, 1977, or as specified prior to July 1, 1977, in
36 Sections 213, 264, and 461, or any felony in which the defendant
37 uses a firearm which use has been charged and proved as provided
38 in Section 12022.5, or 12022.55.

39 (9) Any robbery.

40 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) A violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) *Any offense which would constitute a violation of or an act which would constitute an enhancement pursuant to Section 186.42.*

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

1 (e) The additional penalties provided for prior prison terms
2 shall not be imposed for any felony for which the defendant did not
3 serve a prior separate term in state prison.

4 (f) A prior conviction of a felony shall include a conviction in
5 another jurisdiction for an offense which, if committed in
6 California, is punishable by imprisonment in the state prison if the
7 defendant served one year or more in prison for the offense in the
8 other jurisdiction. A prior conviction of a particular felony shall
9 include a conviction in another jurisdiction for an offense which
10 includes all of the elements of the particular felony as defined
11 under California law if the defendant served one year or more in
12 prison for the offense in the other jurisdiction.

13 (g) A prior separate prison term for the purposes of this section
14 shall mean a continuous completed period of prison incarceration
15 imposed for the particular offense alone or in combination with
16 concurrent or consecutive sentences for other crimes, including
17 any reimprisonment on revocation of parole which is not
18 accompanied by a new commitment to prison, and including any
19 reimprisonment after an escape from incarceration.

20 (h) Serving a prison term includes any confinement time in any
21 state prison or federal penal institution as punishment for
22 commission of an offense, including confinement in a hospital or
23 other institution or facility credited as service of prison time in the
24 jurisdiction of the confinement.

25 (i) For the purposes of this section, a commitment to the State
26 Department of Mental Health as a mentally disordered sex
27 offender following a conviction of a felony, which commitment
28 exceeds one year in duration, shall be deemed a prior prison term.

29 (j) For the purposes of this section, when a person subject to the
30 custody, control, and discipline of the Director of Corrections is
31 incarcerated at a facility operated by the Department of the Youth
32 Authority, that incarceration shall be deemed to be a term served
33 in state prison.

34 (k) Notwithstanding subdivisions (d) and (g) or any other
35 provision of law, where one of the new offenses is committed
36 while the defendant is temporarily removed from prison pursuant
37 to Section 2690 or while the defendant is transferred to a
38 community facility pursuant to Section 3416, 6253, or 6263, or
39 while the defendant is on furlough pursuant to Section 6254, the

1 defendant shall be subject to the full enhancements provided for
2 in this section.

3 This subdivision shall not apply when a full, separate, and
4 consecutive term is imposed pursuant to any other provision of
5 law.

6 SEC. 4. Section 1170.125 of the Penal Code is amended to
7 read:

8 1170.125. (a) Notwithstanding Section 2 of Proposition 184,
9 as adopted at the November 8, 1994 General Election, for all
10 offenses committed on or after the effective date of this act, all
11 references to existing statutes in Section 1170.12 are to those
12 statutes as they existed on the effective date of this act, including
13 amendments made to those statutes by this act.

14 (b) *For purposes of this section, “this act” refers to the act that*
15 *created the California Criminal Terrorism Enforcement Act.*

16 SEC. 5. Section 1192.7 of the Penal Code is amended to read:

17 1192.7. (a) Plea bargaining in any case in which the
18 indictment or information charges any serious felony, any felony
19 in which it is alleged that a firearm was personally used by the
20 defendant, or any offense of driving while under the influence of
21 alcohol, drugs, narcotics, or any other intoxicating substance, or
22 any combination thereof, is prohibited, unless there is insufficient
23 evidence to prove the people’s case, or testimony of a material
24 witness cannot be obtained, or a reduction or dismissal would not
25 result in a substantial change in sentence.

26 (b) As used in this section “plea bargaining” means any
27 bargaining, negotiation, or discussion between a criminal
28 defendant, or his or her counsel, and a prosecuting attorney or
29 judge, whereby the defendant agrees to plead guilty or nolo
30 contendere, in exchange for any promises, commitments,
31 concessions, assurances, or consideration by the prosecuting
32 attorney or judge relating to any charge against the defendant or
33 to the sentencing of the defendant.

34 (c) As used in this section, “serious felony” means any of the
35 following:

36 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
37 (4) sodomy by force, violence, duress, menace, threat of great
38 bodily injury, or fear of immediate and unlawful bodily injury on
39 the victim or another person; (5) oral copulation by force,
40 violence, duress, menace, threat of great bodily injury, or fear of



1 immediate and unlawful bodily injury on the victim or another
2 person; (6) lewd or lascivious act on a child under the age of 14
3 years; (7) any felony punishable by death or imprisonment in the
4 state prison for life; (8) any felony in which the defendant
5 personally inflicts great bodily injury on any person, other than an
6 accomplice, or any felony in which the defendant personally uses
7 a firearm; (9) attempted murder; (10) assault with intent to commit
8 rape or robbery; (11) assault with a deadly weapon or instrument
9 on a peace officer; (12) assault by a life prisoner on a noninmate;
10 (13) assault with a deadly weapon by an inmate; (14) arson; (15)
11 exploding a destructive device or any explosive with intent to
12 injure; (16) exploding a destructive device or any explosive
13 causing bodily injury, great bodily injury, or mayhem; (17)
14 exploding a destructive device or any explosive with intent to
15 murder; (18) any burglary of the first degree; (19) robbery or bank
16 robbery; (20) kidnapping; (21) holding of a hostage by a person
17 confined in a state prison; (22) attempt to commit a felony
18 punishable by death or imprisonment in the state prison for life;
19 (23) any felony in which the defendant personally used a
20 dangerous or deadly weapon; (24) selling, furnishing,
21 administering, giving, or offering to sell, furnish, administer, or
22 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
23 methamphetamine-related drug, as described in paragraph (2) of
24 subdivision (d) of Section 11055 of the Health and Safety Code,
25 or any of the precursors of methamphetamines, as described in
26 subparagraph (A) of paragraph (1) of subdivision (f) of Section
27 11055 or subdivision (a) of Section 11100 of the Health and Safety
28 Code; (25) any violation of subdivision (a) of Section 289 where
29 the act is accomplished against the victim's will by force, violence,
30 duress, menace, or fear of immediate and unlawful bodily injury
31 on the victim or another person; (26) grand theft involving a
32 firearm; (27) carjacking; (28) any felony offense, which would
33 also constitute a felony violation of Section 186.22; (29) assault
34 with the intent to commit mayhem, rape, sodomy, or oral
35 copulation, in violation of Section 220; (30) throwing acid or
36 flammable substances, in violation of Section 244; (31) assault
37 with a deadly weapon, firearm, machinegun, assault weapon, or
38 semiautomatic firearm or assault on a peace officer or firefighter,
39 in violation of Section 245; (32) assault with a deadly weapon
40 against a public transit employee, custodial officer, or school



1 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
2 discharge of a firearm at an inhabited dwelling, vehicle, or aircraft,
3 in violation of Section 246; (34) commission of rape or *sexual*
4 penetration ~~by a foreign object~~ in concert with another person, in
5 violation of Section 264.1; (35) continuous sexual abuse of a child,
6 in violation of Section 288.5; (36) shooting from a vehicle, in
7 violation of subdivision (c) or (d) of Section 12034; (37)
8 intimidation of victims or witnesses, in violation of Section 136.1;
9 (38) ~~terrorist criminal~~ threats, in violation of Section 422; (39) any
10 attempt to commit a crime listed in this subdivision other than an
11 assault; (40) any violation of Section 12022.53; ~~and~~ (41) *a*
12 *violation of Section 11418, 11418.5, or 11419; (42) a violation of*
13 *or any felony with an enhancement pursuant to Section 186.42;*
14 *and (43) any conspiracy to commit an offense described in this*
15 *subdivision.*

16 (d) As used in this section, “bank robbery” means to take or
17 attempt to take, by force or violence, or by intimidation from the
18 person or presence of another any property or money or any other
19 thing of value belonging to, or in the care, custody, control,
20 management, or possession of, any bank, credit union, or any
21 savings and loan association.

22 As used in this subdivision, the following terms have the
23 following meanings:

24 (1) “Bank” means any member of the Federal Reserve System,
25 and any bank, banking association, trust company, savings bank,
26 or other banking institution organized or operating under the laws
27 of the United States, and any bank the deposits of which are
28 insured by the Federal Deposit Insurance Corporation.

29 (2) “Savings and loan association” means any federal savings
30 and loan association and any “insured institution” as defined in
31 Section 401 of the National Housing Act, as amended, and any
32 federal credit union as defined in Section 2 of the Federal Credit
33 Union Act.

34 (3) “Credit union” means any federal credit union and any
35 state-chartered credit union the accounts of which are insured by
36 the Administrator of the National Credit Union administration.

37 (e) The provisions of this section shall not be amended by the
38 Legislature except by statute passed in each house by rollcall vote
39 entered in the journal, two-thirds of the membership concurring,



1 or by a statute that becomes effective only when approved by the
2 electors.

3 SEC. 6. Section 12022 of the Penal Code is amended to read:

4 12022. (a) (1) Except as provided in subdivisions (c) and
5 (d), any person who is armed with a firearm in the commission or
6 attempted commission of a felony shall, upon conviction of that
7 felony or attempted felony, in addition and consecutive to the
8 punishment prescribed for the felony or attempted felony of which
9 he or she has been convicted, be punished by an additional term of
10 one year, unless the arming is an element of the offense of which
11 he or she was convicted. This additional term shall apply to any
12 person who is a principal in the commission or attempted
13 commission of a felony if one or more of the principals is armed
14 with a firearm, whether or not the person is personally armed with
15 a firearm.

16 (2) Except as provided in subdivision (c), and notwithstanding
17 subdivision (d), if the firearm is an assault weapon, as defined in
18 Section 12276 or Section 12276.1, or a machinegun, as defined in
19 Section 12200, the additional term described in this subdivision
20 shall be three years whether or not the arming is an element of the
21 offense of which he or she was convicted. The additional term
22 provided in this paragraph shall apply to any person who is a
23 principal in the commission or attempted commission of a felony
24 if one or more of the principals is armed with an assault weapon
25 or machinegun whether or not the person is personally armed with
26 an assault weapon or machinegun.

27 (b) (1) Any person who personally uses a deadly or dangerous
28 weapon in the commission or attempted commission of a felony
29 shall, upon conviction of that felony or attempted felony, in
30 addition and consecutive to the punishment prescribed for the
31 felony or attempted felony of which he or she has been convicted,
32 be punished by an additional term of one year, unless use of a
33 deadly or dangerous weapon is an element of the offense of which
34 he or she was convicted.

35 (2) If the person described in paragraph (1) has been convicted
36 of carjacking or attempted carjacking, the additional term shall be
37 one, two, or three years.

38 (3) *The enhancements provided in this subdivision shall apply*
39 *to any person who is a principal in the commission of an offense*
40 *if both of the following are pled and proved:*

1 (A) *The person violated subdivision (b) of Section 186.42.*

2 (B) *Any principal in the offense used a deadly or dangerous*
3 *weapon in the commission of the offense.*

4 (4) When a person is found to have personally used a deadly or
5 dangerous weapon in the commission or attempted commission of
6 a felony as provided in this subdivision and the weapon is owned
7 by that person, the court shall order that the weapon be deemed a
8 nuisance and disposed of in the manner provided in Section 12028.

9 (c) Notwithstanding the enhancement set forth in subdivision
10 (a), any person who is personally armed with a firearm in the
11 commission or attempted commission of a violation of Section
12 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,
13 11379.5, or 11379.6 of the Health and Safety Code, shall, upon
14 conviction of that offense and in addition and consecutive to the
15 punishment prescribed for that offense of which he or she has been
16 convicted, be punished by an additional term of imprisonment in
17 the state prison for three, four, or five years in the court's
18 discretion. The court shall order the middle term unless there are
19 circumstances in aggravation or mitigation. The court shall state
20 the reasons for its enhancement choice on the record at the time of
21 the sentence.

22 (d) Notwithstanding the enhancement set forth in subdivision
23 (a), any person who is not personally armed with a firearm who,
24 knowing that another principal is personally armed with a firearm,
25 is a principal in the commission or attempted commission of an
26 offense specified in subdivision (c), shall, upon conviction of that
27 offense, be punished by an additional term of one, two, or three
28 years in the court's discretion. The court shall order the middle
29 term unless there are circumstances in aggravation or mitigation.
30 The court shall state the reasons for its enhancement choice on the
31 record at the time of the sentence.

32 (e) For purposes of imposing an enhancement under Section
33 1170.1, the enhancements under this section shall count as one,
34 single enhancement.

35 (f) Notwithstanding any other provision of law, the court may
36 strike the additional punishment for the enhancements provided in
37 subdivision (c) or (d) in an unusual case where the interests of
38 justice would best be served, if the court specifies on the record and
39 enters into the minutes the circumstances indicating that the
40 interests of justice would best be served by that disposition.

SEC. 7. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) (1) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be 4, 5, or 10 years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment

1 prescribed for the offense of which he or she has been convicted,
2 be punished by an additional term of imprisonment in the state
3 prison for 3, 4, or 10 years in the court's discretion. The court shall
4 order the imposition of the middle term unless there are
5 circumstances in aggravation or mitigation. The court shall state
6 the reasons for its enhancement choice on the record.

7 (d) The additional term provided by this section may be
8 imposed in cases of assault with a firearm under paragraph (2) of
9 subdivision (a) of Section 245, or assault with a deadly weapon
10 which is a firearm under Section 245, or murder if the killing was
11 perpetrated by means of shooting a firearm from a motor vehicle,
12 intentionally at another person outside of the vehicle with the
13 intent to inflict great bodily injury or death.

14 (e) *The enhancements provided in this section shall apply to*
15 *any person who is a principal in the commission of an offense if*
16 *both of the following are pled and proved:*

17 (1) *The person violated subdivision (b) of Section 186.42.*

18 (2) *Any principal in the offense committed any act specified in*
19 *subdivision (a), (b), (c), or (d).*

20 (f) When a person is found to have personally used a firearm,
21 an assault weapon, or a machinegun in the commission or
22 attempted commission of a felony as provided in this section and
23 the firearm, assault weapon, or machinegun is owned by that
24 person, the court shall order that the firearm be deemed a nuisance
25 and disposed of in the manner provided in Section 12028.

26 ~~(f)~~

27 (g) For purposes of imposing an enhancement under Section
28 1170.1, the enhancements under this section shall count as one,
29 single enhancement.

30 SEC. 8. Section 12022.53 of the Penal Code is amended to
31 read:

32 12022.53. (a) This section applies to the following felonies:

33 (1) Section 187 (murder).

34 (2) Section 203 or 205 (mayhem).

35 (3) Section 207, 209, or 209.5 (kidnapping).

36 (4) Section 211 (robbery).

37 (5) Section 215 (carjacking).

38 (6) Section 220 (assault with intent to commit a specified
39 felony).

(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).

(8) Section 261 or 262 (rape).

(9) Section 264.1 (rape or sexual penetration in concert).

(10) Section 286 (sodomy).

(11) Section 288 or 288.5 (lewd act on a child).

(12) Section 288a (oral copulation).

(13) Section 289 (sexual penetration).

(14) Section 4500 (assault by a life prisoner).

(15) Section 4501 (assault by a prisoner).

(16) Section 4503 (holding a hostage by a prisoner).

(17) Any felony punishable by death or imprisonment in the state prison for life.

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements ~~specified~~ *provided* in this section shall apply to any person ~~charged as~~ *who is* a principal in the commission of an offense ~~that includes an allegation pursuant to~~

1 ~~this section when a violation of both this section and subdivision~~
2 ~~(b) of Section 186.22 if both of the following are pled and proved:~~
3 (A) *The person violated subdivision (b) of Section 186.22.*
4 (B) *Any principal in the offense committed any act specified in*
5 *subdivision (b), (c), or (d).*
6 (2) An enhancement for participation in a criminal street gang
7 pursuant to Chapter 11 (commencing with Section 186.20) of Title
8 7 of Part 1 shall not be imposed on a person in addition to an
9 enhancement imposed pursuant to this subdivision, unless the
10 person personally used or personally discharged a firearm in the
11 commission of the offense.
12 (f) *The enhancements provided in this section shall apply to any*
13 *person who is a principal in the commission of an offense if both*
14 *of the following are pled and proved:*
15 (1) *The person violated subdivision (b) of Section 186.42.*
16 (2) *Any principal in the offense committed any act specified in*
17 *subdivision (b), (c), or (d).*
18 (g) Only one additional term of imprisonment under this
19 section shall be imposed per person for each crime. If more than
20 one enhancement per person is found true under this section, the
21 court shall impose upon that person the enhancement that provides
22 the longest term of imprisonment. An enhancement involving a
23 firearm specified in Section 12021.5, 12022, 12022.3, 12022.4,
24 12022.5, or 12022.55 shall not be imposed on a person in addition
25 to an enhancement imposed pursuant to this section. An
26 enhancement for great bodily injury as defined in Section 12022.7,
27 12022.8, or 12022.9 shall not be imposed on a person in addition
28 to an enhancement imposed pursuant to subdivision (d).
29 ~~(g)~~
30 (h) Notwithstanding any other provision of law, probation shall
31 not be granted to, nor shall the execution or imposition of sentence
32 be suspended for, any person found to come within the provisions
33 of this section.
34 ~~(h)~~
35 (i) Notwithstanding Section 1385 or any other provision of law,
36 the court shall not strike an allegation under this section or a
37 finding bringing a person within the provisions of this section.
38 ~~(i)~~
39 (j) The total amount of credits awarded pursuant to Article 2.5
40 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3

or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

~~(j)~~

(k) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

~~(k)~~

(l) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

~~(l)~~

(m) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 9. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) A person who personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(b) A person found to have inflicted great bodily injury pursuant to subdivision (a) which causes the victim to become comatose due to brain injury or to suffer paralysis, as defined in

1 Section 12022.9, of a permanent nature, shall be punished by an
2 additional and consecutive term of five years.

3 (c) A person who personally inflicts great bodily injury on a
4 person who is 70 years of age or older, other than an accomplice,
5 in the commission or attempted commission of a felony shall, in
6 addition and consecutive to the punishment prescribed for the
7 felony or attempted felony of which he or she has been convicted,
8 be punished by an additional term of five years, unless infliction
9 of great bodily injury is an element of the offense of which he or
10 she is convicted.

11 (d) A person who personally inflicts great bodily injury on a
12 child under the age of five years in the commission or attempted
13 commission of a felony shall, in addition and consecutive to the
14 punishment prescribed for the felony or attempted felony of which
15 he or she has been convicted, be punished by an additional term of
16 four, five, or six years, unless infliction of great bodily injury is an
17 element of the offense of which he or she is convicted. The court
18 shall order imposition of the middle term unless there are
19 circumstances in aggravation or mitigation. The court shall state
20 its reasons for its enhancement choice on the record at the time of
21 sentencing.

22 (e) A person who personally inflicts great bodily injury under
23 circumstances involving domestic violence in the commission or
24 attempted commission of a felony shall, in addition and
25 consecutive to the punishment prescribed for the felony or
26 attempted felony of which he or she has been convicted, be
27 punished by an additional term of three, four, or five years. The
28 court shall order imposition of the middle term unless there are
29 circumstances in aggravation or mitigation. The court shall state
30 its reasons for its enhancement choice on the record at the time of
31 sentencing. As used in this section, “domestic violence” has the
32 meaning provided in subdivision (b) of Section 13700.

33 (f) *The enhancements provided in this section shall apply to any*
34 *person who is a principal in the commission of an offense if both*
35 *of the following are pled and proved:*

36 (1) *The person violated subdivision (b) of Section 186.42.*

37 (2) *Any principal in the offense committed any act specified in*
38 *subdivision (a), (b), (c), (d), or (e).*

39 (g) As used in this section, “great bodily injury” means a
40 significant or substantial physical injury.



~~(g)~~

(h) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

~~(h)~~

(i) The court shall impose the additional terms of imprisonment under either subdivision (a), (b), (c), or (d), but may not impose more than one of those terms for the same offense.

SEC. 10. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(6) By imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) *Where the person is an active participant in criminal terrorism, as defined in subdivision (c) of Section 186.42, or a criminal terrorist organization, as defined in subdivision (d) of Section 186.42, by imprisonment in the state prison for 5, 10, or 15 years.*

(8) In all cases other than those specified in paragraphs (1) to ~~(6)~~ (7), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (b) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (b) is met.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment

1 in a county jail for at least three months and not exceeding six
2 months, or, if granted probation, or if the execution or imposition
3 of sentence is suspended, it shall be a condition thereof that he or
4 she be imprisoned in a county jail for at least three months.

5 (2) Every person convicted under this section who has
6 previously been convicted of any felony, or of any crime made
7 punishable by this chapter, if probation is granted, or if the
8 execution or imposition of sentence is suspended, it shall be a
9 condition thereof that he or she be imprisoned in a county jail for
10 not less than three months.

11 (e) The court shall apply the three-month minimum sentence as
12 specified in subdivision (d), except in unusual cases where the
13 interests of justice would best be served by granting probation or
14 suspending the imposition or execution of sentence without the
15 minimum imprisonment required in subdivision (d) or by granting
16 probation or suspending the imposition or execution of sentence
17 with conditions other than those set forth in subdivision (d), in
18 which case, the court shall specify on the record and shall enter on
19 the minutes the circumstances indicating that the interests of
20 justice would best be served by that disposition.

21 (f) Firearms carried openly in belt holsters are not concealed
22 within the meaning of this section.

23 (g) For purposes of this section, “lawful possession of the
24 firearm” means that the person who has possession or custody of
25 the firearm either lawfully owns the firearm or has the permission
26 of the lawful owner or a person who otherwise has apparent
27 authority to possess or have custody of the firearm. A person who
28 takes a firearm without the permission of the lawful owner or
29 without the permission of a person who has lawful custody of the
30 firearm does not have lawful possession of the firearm.

31 (h) (1) The district attorney of each county shall submit
32 annually a report on or before June 30, to the Attorney General
33 consisting of profiles by race, age, gender, and ethnicity of any
34 person charged with a felony or a misdemeanor under this section
35 and any other offense charged in the same complaint, indictment,
36 or information.

37 (2) The Attorney General shall submit annually, a report on or
38 before December 31, to the Legislature compiling all of the reports
39 submitted pursuant to paragraph (1).

1 (3) This subdivision shall remain operative until January 1,
2 2005, and as of that date shall be repealed.

3 SEC. 11. If any provision of this act, or the application thereof
4 to any person or circumstance is held invalid, that invalidity shall
5 not affect other provisions or applications of those provisions
6 which can be given effect without the invalid provision or
7 application, and to this end the provisions of this act are severable.

8 SEC. 12. No reimbursement is required by this act pursuant
9 to Section 6 of Article XIII B of the California Constitution
10 because the only costs that may be incurred by a local agency or
11 school district will be incurred because this act creates a new crime
12 or infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

17 SEC. 13. This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety
19 within the meaning of Article IV of the Constitution and shall go
20 into immediate effect. The facts constituting the necessity are:

21 The State of California, along with its sister states, is in a state
22 of crisis which has been caused by terrorist organizations whose
23 members have threatened, have terrorized, and have committed a
24 multitude of crimes against the peaceful citizens of the United
25 States. These actions by terrorist organizations threaten the peace
26 and safety of the citizens of the State of California. The activities
27 of these terrorist organizations and their members present a clear
28 and present danger to public order and safety. In order to protect
29 the public order and safety from the imminent threat posed by
30 these criminal terrorist organizations, it is necessary that this act
31 take effect immediately.

